

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-1": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.Nos.8021 to 8025/Del./2018
Assessment Years 2009-10 to 2013-14

Om Prakash Rana (Individual), 823, Ex MLA Wali Gali, Bijwasan, New Delhi. PAN No. AXDPR0827J	vs.	ACIT Circle 44(1) New Delhi.
(Appellant)		(Respondent)

For Assessee :	Ms. Priamvada Surolia, Adv.
For Revenue :	Shri Prakash Dubey, Sr. DR

Date of Hearing :	07.01.2021
Date of Pronouncement :	01.02.2021

ORDER

All the appeals by assessee are directed against the different orders of Ld. CIT(Appeals)-15, Delhi dated 09.10.2018 for above assessment years, challenging the levy of penalty u/s 271(1)(c) of the IT Act.

2. I have heard Ld. Representatives of both the parties and perused the material on record.

3. Briefly the facts are that the AO came into possessing the information that during the assessment years, assessee had

received rental income as his share of income from house property. Since, the income exceeded maximum amount which is chargeable to tax, assessee was liable to file return of income u/s 139 of the IT Act, however, it was revealed to the AO that no ITR was filed by the assessee for any of the assessment years. The AO issued notices u/s 148 of the Act and completed the assessment determining the income of the assessee from house property. The AO vide separate orders levied the penalty u/s 271(1)(c) of the Act for willfully, knowingly and without any reasonable cause failed to file the return of income. The Ld. CIT(A) vide separate orders confirm the levy of penalty.

4. Ld. Counsel for assessee referred to show-cause notice dated 26.08.2016 and 28.02.2017 and submitted that since the notices are invalid and defective, therefore, penalty is not leviable against the assessee. Ld. Counsel for assessee relied upon the judgment of the Hon'ble Delhi High Court in the case of Pr. CIT vs. M/s Sahara India Life Insurance Company Limited, 2019 (8) TMI 409.

5. On the other hand, Ld. DR submitted that AO's failure to strike of column in show-cause is no ground for deleting the penalty and in the written submission referred to certain decisions.

6. I have considered the rival submissions and perused the material on record. The AO issued show-cause notices before levy of the penalty u/s 271(1)(c) of the Act dated 26.08.2016 for all the assessment years in which the AO has mentioned as under: -

“Have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of Explanation 1, 2, 3, 4 and 5”.

The similar language has been mentioned by the AO in another show-cause notice dated 28.02.2017. Copies of the same are placed on record.

7. These facts, therefore, clearly show that notices issued by the AO for levy of penalty u/s 271(1)(c) of the Act to be bad in law as it did not specify in which limb of section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing inaccurate particulars of income. The show-cause notices are, therefore, bad in law and illegal and, as such, the entire penalty proceedings are vitiated and no penalty is leviable against the assessee in any of the years. On this scope itself, similar views is taken by the Hon'ble Karnataka High Court in the case of CIT Vs. M/s SSAs Emerald Meadows 73 taxmann.com 241 and this decision is confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248. The Hon'ble Delhi High Court in the case of Pr. CIT Vs. M/s

Sahara India Life Insurance Company Ltd. (supra), following the above decisions of Karnataka High Court did not find any error in the order of the Tribunal in cancelling the penalty. Further, the ITAT Delhi Benches are taking a consistent view i.e. in such circumstances, levy of penalty is invalid. I may rely upon one of the decisions of the Tribunal in the case of Smt. Krishna Devi Vs. ACIT (ITA No. 8020/Del/2018 dated 03.06.2019). Since, the show-cause notices are invalid for levy of the penalty due to above reasons and, as such, the entire penalty proceedings are vitiated. Thus, no penalty is leviable against the assessee. The decisions relied upon by Ld. DR in the written submission would not support the case of the Revenue.

8. In view of the above, I set aside the orders of the authorities below and cancel the penalty in all the appeals.

9. In the result, all the appeals of assessee are allowed.

Order pronounced in the open Court on 01.02.2021.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 01.02.2021

*Kavita Arora

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.